

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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NEHEMIAH D. ROLLE,

Plaintiff,

-against-

ORDER

Civil Action No. 02-4398 (DRH)(WDW)

ELISE McCARTHY, personally and individually in her capacity as an Assistant District Attorney, Chief of the Felony Screening Bureau, ROBERT CAVALLO, personally and individually and in his official capacity as an Assistant District Attorney, JOHN DOE, personally and individually and in his official capacity as an Assistant District Attorney, and NASSAU COUNTY, a Municipal corporation,

Defendants.

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HURLEY, Senior District Judge:

By Report and Recommendation dated June 21, 2005, Magistrate Judge Boyle recommended that the complaint be dismissed. Plaintiff, proceeding pro se, filed an appeal from that Recommendation to this Court and sought additional time to respond to the Report and Recommendation. The request for additional time was granted. However, the Court then determined that it was divested of jurisdiction in light of Plaintiff's Notice of Appeal from an Order of this Court dated May 25, 2005 [*see* Order dated September 21, 2005]. Subsequently, the Second Circuit issued its mandate dismissing Plaintiff's appeal from the May 25, 2005 Order

of this Court (*see* Docket No. 49), restoring jurisdiction to this Court. By Order dated May 31, 2007, the Court directed Plaintiff to serve and file his response to the June 21, 2005 Report and Recommendation on or before July 30, 2007. By letter dated July 30, 2007 Plaintiff requested an additional 45 days to respond to the Report and Recommendation. On, August 7, 2007, the Court granted Plaintiff until October 1, 2007 to serve and file his objections. To date, no objections have been filed.

The Second Circuit had held that “[w]here parties receive clear notice of the consequences, failure to timely object to a magistrate’s report and recommendation operates as a waiver of further judicial review of the magistrate’s decision.” *Mario v. P & C Food Mkts*, 313 F.3d 758, 766 (2d Cir. 2002). In this case, Plaintiff received clear notice of the consequences of failing to file objections. The Report and Recommendation stated “Failure to file objections . . . will preclude further appellate review of the District Court’s Order.”

Even when the parties receive clear notice of the failure to file timely objections, a Court may, however, exercise discretion and review the report for clear error. *See Cablevision Sys. N.Y. City Corp. v. Guity*, 2006 U.S. Dist. Lexis 50009 at *2 (E.D.N.Y. 2006) (citing *Spence v. Superintendent, Great Meadow Corr. Facility*, 219 F.3d 162, 174 (2d Cir. 2000)).

Here, nothing on the face of the Report suggests plain error. Indeed, this Court agrees with Judge Boyle’s conclusions that (1) this Court lacks subject matter jurisdiction under both the *Rooker-Feldman* doctrine and *Younger* abstention doctrine and (2) Plaintiff’s claims should be dismissed under Federal Rule of Civil Procedure 12(b)(6). Accordingly, this Court adopts the June 21, 2005 Report and Recommendation of Judge Boyle in its entirety as if set forth herein.

IT IS HEREBY ORDERED that the Complaint be dismissed. The Clerk of Court is directed to close this case.

SO ORDERED.

Dated: Central Islip, N.Y.
October 23, 2007

/s/

Denis R. Hurley,
United States District Judge